No. 80-756

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD S. SCHWEIKER, Secretary of Health and Human Services, and Administrator, Health Care Financing Administration,
Petitioners,
v.
GRAY PANTHERS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF *AMICUS CURIAE* OF JOHN H. FOARD, LILA CARTER, YOLANDA AND QUENTIN ALLEN, OSCAR AND GRACE HYDE, AND ELIZABETH AND JAMES BROWN, URGING AFFIRMANCE

JEAN MARIE CAREY
THOMAS W. JORDAN, JR.
EAST CENTRAL COMMUNITY LEGAL SERVICES
512 PROFESSIONAL BUILDING
POST OFFICE DRAWER 1731
RALEIGH, NORTH CAROLINA 27602
(919) 828-4647

PETER L. CASSADY
WILLIAM E. MARPLE
LEGAL SERVICES ORG. OF INDIANA, INC.
107 N. PENNSYLVANIA
SUITE #1008
INDIANAPOLIS, INDIANA 46204
(317) 631-1395

LUCY BILLINGS
UTAH LEGAL SERVICES, INC.
352 S. DENVER
SALT LAKE, UTAH 84111
(801) 328-8891

Central Publishing Company, Inc. Indianapolis, IN 46206

TABLE OF CONTENTS

Table of Authorities ii
Statement of Interest 2
Argument 2
Conclusion 14
Appendix A A-1

TABLE OF AUTHORITIES

CASES — PAGE

Allen v. Califano, No. C-78-212 (D. Utah, Aug. 23, 1979), *appeal pending* No. 79-2167 (10th Cir.) 7

Brown v. Stanton, 617 F.2d 1224 (7th Cir. 1980), *pet. for cert. pending*, No. 79-1690 (filed April 25, 1980) 11

Foard v. Gibson, CCH Medicare & Medicaid Guide, ¶29,679 (D.N.C. 1979) 4

Gray Panthers v. Administrator, 629 F.2d. 180 (D.C. Cir. 1980) 2

STATUTES

42 U.S.C. §1396 *et seq.* 3

42 U.S.C. §1396(f) 3

42 U.S.C. §1396a(a)(17) 12, 13

REGULATIONS

42 C.F.R. §435.734 3

42 C.F.R. §436.602 3

42 C.F.R. §436.711 3

42 C.F.R. §436.821 3

MISCELLANEOUS

S. Rep. No. 404, 89th Cong, 1st Sess. 78 13

No. 80-756

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD S. SCHWEIKER, Secretary of Health and Human Services, and Administrator, Health Care Financing Administration,
Petitioners,

v.

GRAY PANTHERS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF *AMICUS CURIAE* OF JOHN H. FOARD, LILA CARTER, YOLANDA AND QUENTIN ALLEN, OSCAR AND GRACE HYDE, AND ELIZABETH AND JAMES BROWN, URGING AFFIRMANCE

INTEREST OF AMICUS CURIAE

John H. Foard, Lila Carter, Yolanda and Quentin Allen, Oscar and Grace Hyde, and Elizabeth and James Brown have a vital interest in the outcome of this case because they are Medicaid recipients and spouses of recipients whose lives have been dramatically effected by the federal regulations which the Gray Panthers, respondent, challenge in this litigation. The *amici* are residents of North Carolina, Utah, and Indiana which are states whose Medicaid programs must comply with the federal "deeming" regulations, the validity of which is the subject-matter of this cause. The *amici* themselves all initiated litigation in their home states challenging the legality of regulations, policies and practices which each of their respective states adopted in order to implement the challenged federal regulations.

The *amici* are not governmental bodies or associations with a particular viewpoint. They are all persons who either live in nursing homes or whose spouses live in nursing homes. They are individuals of very modest means and resources whose lives were hurt by their states' implementation of the challenged federal regulations. They have a very personal stake in the outcome of this case because it will significantly impact on their ability to meet the basic necessities of their lives, affect their entitlement to twenty-four (24) hour professional care at a nursing home, affect their long-standing marriages and even the preservation of their own personal dignity as they live out their remaining years as senior citizens. They join the Gray Panthers, respondent, in urging this Court to affirm the decision of the Court of Appeals, 629 F.2d 180 (D.C. Cir. 1980).

ARGUMENT

The Medicaid program provides funds to participating states for the provision of medical assistance to aged, blind and disabled persons (among others) whose income and

resources are insufficient to meet the costs of necessary medical services. This case is focused on the legality of certain federal regulations (42 C.F.R. §§435.734, 436.602, 436.711 and 436.821) which the Secretary of Health and Human Resources, petitioner herein, has adopted pursuant to his federal responsibility to administer the jointly funded (federal and state) Medicaid program, 42 U.S.C. §1396 *et seq.* These federal regulations apply only to those states who have chosen to participate in the Medicaid program pursuant to the option found at 42 U.S.C. §1396(f). Fifteen (15) states have chosen this option and are known as "§209(b)" states. These §209(b) states must administer their Medicaid programs at the state level within the confines of all applicable federal law, including the challenged federal regulations.

At the heart of the legal controversy facing the Court is the question of who is going to pay the cost of an aged, blind or disabled Medicaid recipient's nursing home care. The federal regulations found unlawful by the Court of Appeals enabled the §209(b) states to set up the following general scheme: (a) the Medicaid recipient residing in the nursing home keeps a minimum amount (usually between $25.00-$30.00) of his own monthly income for his personal needs and pays the remaining amount to the nursing home; (b) the Medicaid recipient's non-institutionalized spouse is permitted to keep some arbitrary sum of money (unrelated to her own needs and obligations) out of her own income and required to pay all the rest to the nursing home; and (c) the §209(b) state pays whatever part of the nursing home expense remains after the Medicaid recipient and his spouse have made their payments. *Amici* have all filed class action lawsuits in their respective states to challenge the regulatory schemes which were governing the payment of nursing home expenses for Medicaid recipients. In each case the *amici* prevailed in their litigation efforts with one common result: the non-institutionalized spouse's obligation to the nursing home was tailored to her individual ability to make payments.

This result foreclosed the threat to the Medicaid recipient-spouse residing in the nursing home of eviction from the home for non-payment by his spouse. The result also allowed Medicaid recipient-spouse to remain secure in the knowledge that his spouse did not have to choose between meeting her own basic needs and making payments to the nursing home. Each of their cases will be dramatically influenced by the outcome of the Court's decision in this case.

A. *Foard v. Gibson*, CCH Medicare & Medicaid Guide, ¶29,679 (W.D. N.C. 1979), No. C-C-78-0319

John Foard, age 63 years, and his wife Alma Foard live in North Carolina and have been married for more than 37 years. Mrs. Foard suffers from multiple sclerosis. Mr. Foard worked for years as a machine operator and supervisor and a service station operator. He was forced to retire from his job after he suffered a severe heart attack September 14, 1974. Despite his own disability, Mr. Foard cared for his wife night and day until August 17, 1977, when she was hospitalized. A month after her hospitalization, Mrs. Foard was transferred to a nursing home for skilled nursing care. She later returned to her home, but Mr. Foard was not able to care for her. After five days Mrs. Foard called an ambulance to take her back to the skilled nursing facility where she has remained to the present time.

Mrs. Foard is a Medicaid recipient and pursuant to North Carolina's §209(b) plan, she was allowed throughout 1978 to keep $29.00 out of her $214.00 monthly Social Security Disability check but was required by the North Carolina plan to pay the remaining $185.00 to the nursing home. Mr. Foard was allowed to keep $162.33 of his $356.20 Social Security Disability check and was required by the plan to pay the remaining $183.87 to the nursing home.

Mr. Foard's average actual monthly expenses were $313.00. After he paid his contribution to his wife's care, he

had $162.33 left to meet his monthly expenses of $313.00. It was impossible for him to meet his fixed monthly expenses. He had the choice of going without basic necessities of life or jeopardizing his wife's health by failing to pay the mandated contributions. Mr. Foard expended all of his savings supporting himself and his wife. He cut off the propane gas to his stove in order to save $4.00 per month. Since he could no longer heat his food, he resorted to eating cornflakes and skim milk for most meals. Before he had exhausted his savings, Mr. Foard drove to the nursing home three times per week. To save money, he reduced his trips to two times per week. During the winter he spent early evenings in bed in order to save on fuel costs. He cancelled all his life insurance policies because he could not pay the premiums.

Mr. Foard's only alternative to paying the mandated contribution was to sign a "Separation Agreement" drafted by the North Carolina Department of Human Resources which stated that he did not intend to live with his wife of more than thirty-five (35) years should she be released from the nursing home. If he signed this agreement, North Carolina would have freed him of any obligation to make payments to the nursing home. But John Foard refused this option because he feared that it would adversely impact on his wife's emotional and physical health.[1]

For approximately eighteen years, Eddie Carter, now deceased, was employed with the State of North Carolina at Central Prison in Raleigh, North Carolina. In December, 1974, he was released from his employment due to difficulties concerning his memory and ability to follow instructions. After hospitalization, he was diagnosed as suffering from organic brain syndrome. Lila Carter, the widow of Eddie Carter, cared for Eddie Carter at their

---

[1] See the testimony of Juanita Holland, Appendix A. at 11-12 at the preliminary injunction hearing in *Foard v. Gibson* regarding North Carolina's "Separation Agreement."

home in Clayton, North Carolina, from January 1975, until September, 1975. Mr. Carter needed constant attention as he was prone to wandering off. Also, he had periods of violent activity when he would attempt to assault his wife. In September, 1975, Mr. Carter was admitted to a nursing home; and he resided there almost continuously until his death in November, 1979.

As in the case of Mrs. Foard, Mr. Carter participated in North Carolina's Medicaid program which required that both she and her husband make payments on her nursing home care while Medicaid paid the remainder. In 1978 Mr. Carter derived his total income from Social Security Disability benefits ($335.30 per month) and State Retirement payments ($216.37 per month). He was allowed to retain $29.00 of his total income of $551.67 for his personal needs but he was required to pay the balance of his income to the nursing home. During this time, Mrs. Carter derived her entire income from Social Security Disability benefits ($241.10 per month). She was allowed to retain $162.33 per month from her own income but was required to pay the balance to the nursing home.

Mrs. Carter's average actual monthly expenses were $245.00. It was impossible for her to meet her fixed monthly expenses on $162.33. She had the choice of going without basic necessities of life or jeopardizing her husband's health by failing to pay the mandated contribution.

On May 15, 1978, Mrs. Carter was told that Mr. Carter would be put out on the street in front of the nursing home on May 22, 1978, unless she could pay the nursing home the amount deemed for part of April, 1978 and the month of May, 1978. She managed to borrow the money from neighbors in order to continue her husband's necessary medical care. She constantly faced the threat that Mr. Carter would be evicted because Medicaid would pay only a portion of the cost of institutionalization. Mrs. Carter testified at the Preliminary Injunction hearing on March

21, 1979, that her husband faced imminent eviction if she did not immediately pay her entire mandated contribution.[2] Of course Mrs. Carter could have also availed herself of North Carolina's "Separation Agreement" but she refused, explaining that "When I married my husband, I said for better or worse. I took my marriage vows very seriously and just because he's ill, I do not intend to divorce him now if I have to live off of bread and water." Appendix at 6.

In October, 1978, John H. Foard and Lila Carter filed a class action complaint in the United States District Court for the Western District of North Carolina, Charlotte Division, challenging North Carolina's regulations, policies and practices used in implementing the federal "deeming" regulations. On March 21, 1979, after conducting a hearing, the district court entered an order certifying a class and preliminarily enjoining the North Carolina officials from their "deeming practices and procedures which require that an arbitrary portion of the income of the non-institutionalized spouse be 'deemed' available for the care of the institutionalized spouse without regard to actual living costs of the non-institutionalized spouse."[3] The state officials did not appeal the entry of the preliminary injunction and the cause has remained inactive ever since, pending a decision by this Court in the instant cause.

B. *Allen v. Califano*, No. C-78-212 (D. Utah, Aug. 23, 1979), *appeal pending*, No. 79-2167 (10th Cir.)

Yolando and Quentin Allen and Oscar and Grace Hyde filed their class action complaint in the United States District Court for Utah in 1978 against both the Utah officials who administer that state's Medicaid program and against the Secretary of Health and Human Services of the federal government. On August 23, 1979, the district court

---

[2] See Mrs. Carter's testimony Appendix at 5.

[3] Preliminary Injunction Order (March 27, 1979), p. 4

granted plaintiffs' motion for summary judgment against both sets of defendants. The Utah officials were enjoined from assuming (or "deeming") that a non-institutionalized spouse had specific sums of money available for payment to her Medicaid recipient-spouse's nursing home. Further, the Court declared the same federal regulations which are the subject of this cause to be illegal and ordered the federal government to issue new regulations, just as the district court below had done in this cause. The defendants in *Allen v. Califano* appealed the decision to the United States Court of Appeals for the Tenth Circuit (No. 79-2167) wherein all proceedings on the appeal have been stayed by that court. However, in an order entered on December 10, 1980, the Tenth Circuit specifically denied the federal government's motion to stay the district court order.

The plaintiffs in this Utah case have been struggling with the problem of obtaining and paying for nursing home care for several years. It has been at great personal sacrifice. Their lawsuit, as related above, did not remove their problems; rather, it merely removed the dilemma of the non-institutionalized spouse having to choose between meeting her own basic needs and preserving the continued nursing home care of her Medicaid recipient-spouse, without having to utilize the expedient but personally distasteful option of divorce. An examination of the facts personal to the Allens and Hydes will illustrate the harsh effect of the deeming regulations.

Mr. Allen suffers from serious diabetes and the totally incapacitating effects of a stroke. He cannot walk and has no control over his bodily functions. He requires constant attention and care from skilled personnel. Without such care, he will not continue to survive.

Eight years ago Mrs. Allen had to sell the house in which she and Mr. Allen had lived in Tremonton, Utah, in order to pay for her husband's care. The proceeds have long since been exhausted. To support herself, she joined the labor force, at age 58, for the first time in her life. She has not

worked long enough at her job to accumulate any retirement benefits. Now, at age 66, she must continue working as long as possible in order to support herself and acquire a minimal amount of savings on which to live after retirement.

Her present expenses consume all of her take-home pay, however. In order to remain as close as possible to her husband's nursing home, she has been purchasing the apartment in which she has been living at the cost of $229.00 per month. Three years ago, when her husband first applied for Medicaid, her gas and electricity bills average $50.00 per month and the minimum telephone bill was $9.00 per month. At that time, even economizing as much as possible, food expenses still ran $150.00 per month in order to provide herself adequate nourishment. She also suffers from a back injury and has paid for her own medical and dental expenses. Traveling at least 20 miles each day to work and to visit her husband, she spent at least $40.00 on gasoline, oil, and maintenance for her automobile. Her car is now eleven years old and has been having mechanical problems, and, needless to say, all these expenses have skyrocketed over the last three years.

The Allens have no savings account and no other assets. All of Mr. Allen's monthly Social Security benefits are taken to pay for his nursing care. Mrs. Allen has worked hard too, to provide for herself from her earnings. She desperately wants her husband to continue receiving his nursing care, but if part of her earnings are taken to pay for his care, too, she will no longer be able to provide for her basic necessities.

Mrs. Allen does not know how much longer she will be able to work. She is willing to continue working as long as she remains in good health and there is a place for her in the labor market. Beginning her work experience at age 58 was very difficult, but she has felt it important to be as self-sustaining as possible; she has never desired to burden anyone. Her only wish has been to stay by her husband and

see that he receives the best possible care. If she is able to contribute further toward his care, all of her continued efforts indicate that she will.

Grace Hyde is institutionalized in the Geriatics Ward of the Utah State Hospital. She suffers from brain damage and seizures. Mrs. Hyde was operated on for brain aneurisms in 1960. Due to inadequate medical care in the post-operative state, complications set in, and she developed severe mental aberrations. These caused her to experience several violent seizures, necessitating skilled medical attention for her continued well-being. In December, 1976, after she was taken to the University of Utah Medical Center for emergency treatment, the state district court ordered that she be involuntarily committed, and she has remained in the State Hospital ever since. Her aneurisms and mental difficulties continue, and the doctors attending her report that her future mental health is questionable. She is not improving, and without continued skilled medical attention, she will not survive.

Oscar Hyde, at age 75, has worked all his life to be self-sufficient, also has established certain maintenance costs for his home, and has exhausted all his savings to pay for his wife's care. Since he has retired his only income is a small pension and a Social Security benefit. His wife's Social Security benefits are paid toward her care. Because her doctors report that she responds well to Mr. Hyde's visits, for years now he has devoutly traveled from Salt Lake City to Provo, Utah, to visit her in the State Hospital, a total of 120 miles round trip, at least a couple of times a week. His gasoline expenses are high. He buys his wife's clothing and other personal items from which she can derive some pleasure in life and even medical supplies which the Hospital does not provide her. His telephone bills are also high, because of the collect calls from the State Hospital. Mr. Hyde pays for his own medical and dental expenses, having exhausted their insurance on Mrs. Hyde's care. He has found that frequent exercise and recreation are

essential to keeping himself fit—mentally as much as physically—relieving his anxieties over his wife, and maintaining social relationships and his own emotional stability. While these efforts may save his health in the long run, nothing is free. And even if they could not be considered cost-saving measures, when one has worked an entire life long, only to be beset by so many problems, a little recreation can hardly be considered exorbitant.

Mr. Hyde has spent close to $25,000.00 for his wife's care, as well as his private insurance and her own Social Security benefits. The Hydes have no resources left. If Mr. Hyde's benefits are reduced to the minimum public assistance level to pay for his wife's care, too, he could not meet those most basic living expenses, which were established long before his wife was committed to the Hospital, and his lifetime goal of self-sufficiency will disappear from his life forever. He is not opposed to paying a reasonable amount for his wife's care; indeed, he has; and if he is able to contribute further toward her care, all of his enduring efforts indicate that he will.

C. *Brown v. Stanton*, 617 F.2d 1224 (7th Cir. 1980), *pet. for cert.* pending No. 79-1690 (filed April 25, 1980)

James Brown, now 76 years of age, is an adjudicated incompetent whose son, Michael, acts as his guardian. Mr. Brown, suffering from chronic brain syndrome, is unable to remember simple facts, refuses to change clothes or bathe, and is unable to control his body functions. Unable to care for or control her husband and upon a physician's recommendation, Elizabeth Brown, James' wife of thirty-five (35) years, arranged to have him moved into a nursing home near her Indianapolis, Indiana home. At this same time (October, 1978), she contacted the Welfare Department to request that Mr. Brown be certified as eligible for participation in Indiana's Medicaid program. The Welfare Department found James to be Medicaid eligible but required that Mrs. Brown, in accordance with

a uniformly applied mathematical formula embodied in state regulations, pay part of the nursing home expenses out of her own income and resources.

The Browns, as their counterparts in Utah and North Carolina, were in a dilemma because Elizabeth was unable to pay her assigned share to the nursing home and James desparately needed professional, twenty-four (24) hour care. Rather than obtain a divorce, which would have rendered Mr. Brown totally eligible in his own right, they challenged the state regulations in the United States District Court for the Southern District of Indiana, Indianapolis Division. After a trial on the merits, the district court, on February 16, 1979, certified a plaintiff class and declared that the Indiana regulations were contrary to 42 U.S.C. §1396a(a)(17) insofar as they acted to arbitrarily and irrebuttably assume or deem that certain portions of Mrs. Brown's income and resources were "available" for the cost of her husbands' care when, in fact, they were not. The court ordered the state welfare officials to tailor Mrs. Brown's financial obligations to her individual ability after taking into account all of her other needs and obligations. On appeal, the Seventh Circuit affirmed the district court's order for individualized treatment of non-institutionalized spouses such as Mrs. Brown.

However, the Seventh Circuit also addressed a "second level of inquiry" and held that Indiana could not assume that an able spouse would always actually pay her assigned share to the nursing home. The court reasoned that if Indiana were allowed to deem an able spouse's contribution to the cost of the spouse's nursing home care, then upon her refusal or failure to actually so contribute, the Medicaid recipient would be in an extremely vulnerable position "raising the spector of eviction" from the nursing home. 617 F.2d at 1226.

But more importantly, the Seventh Circuit held that 42

U.S.C. §1396a(a)(17)[4] could not be internally consistent with any other interpretation. Specifically, the Seventh Circuit held that Indiana was authorized by subpart (D) of §1396a(a)(17) to require non-institutionalized spouses to defray part of the cost of their spouse's nursing home care, but that subpart (B) required Indiana, in determining the exact amount of Medicaid funds which it would pay to the nursing home to take into account only that income and resources which the spouses actually paid to the nursing home.[5] The Seventh Circuit explained that in the event that an able, non-institutionalized spouse refused to meet her financial obligations to the nursing home, Indiana would be required under subpart (B) to make an upward adjustment in the amount of Medicaid benefits it pays on behalf of the recipient; and then, in accordance with subpart (D), the state could take all steps necessary to make full and proper collection from the unwilling spouse.

The appellate court thus fully resolved any apparent conflict between the requirement of subpart (B) to consider

---

[4] That statute provides:

(a) A state plan for medical assistance must—

(17) include reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient . . ., (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child . . .

[5] The Senate Finance Committee in speaking of Section 1936a(a)(17) in their report upon the Medicaid statute stated:

Another provision is included that requires states to take into account only such income and resources as . . . are actually available to the applicant or recipient . . .

These provisions are designed so that the states will not assume the availability of income which may not, in fact, be available or overvaluate income and resources which are available. S.Rep. No. 404, 89th Cong., 1st Sess. 78, reprinted in [1965] U.S. Code Cong. & Ad. News 1943, 2018.

only actually available income and resources and the authorization of subpart (D) to impose financial requirements on non-institutionalized spouses. Furthermore, it removed the possibility of a Medicaid recipient being harshly evicted from a nursing home whenever his able spouse refused or failed to meet her obligations. "To hold otherwise would be to deny an eligible recipient his full benefits because of an improper action of his or her spouse." 617 F.2d at 1231.

CONCLUSION

Amici, with respondent, urge this Court to remove the terrible dilemma which so many blind, disabled and older citizens are facing every day as they must choose between meeting the needs of one spouse or continuing the nursing home care of the other spouse. Nor, of course, should they be disgraced with the "simple" but pathetic option of an expedient divorce. *Amici* respectfully urge with respondent that the decision of the Court of Appeals for the District of Columbia be affirmed.

Respectfully submitted,

Jean Marie Carey

Thomas W. Jordon, Jr.
East Central Community
Legal Services
512 Professional Building
Post Office Drawer 1731
Raleigh, North Carolina 27062
(919) 828-4647

Peter L. Cassady

William E. Marple
Legal Services Organization
of Indiana, Inc.
107 North Pennsylvania St.
Suite #1008
Indianapolis, Indiana 46204
(317) 631-1395

Lucy Billings
Utah Legal Services, Inc.
352 S. Denver
Salt Lake, Utah 84111
(801) 328-8891

Appendix

APPENDIX A

Testimony of Lila Carter and Juanita Holland given on March 21, 1979 in *Foard v. Gibson*, CCH Medicare & Medicaid Guide, ¶29, 679 (W.D. N.C. 1979), No. C-C-78-0319.

LILA CARTER,

a witness called by the plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CARY:

Q Ms. Carter, state your name and address.

A Lila Carter, 502 West Second Street, Clayton, North Carolina, 27520.

Q Are you married?

A Yes, ma'am.

Q What is the name of your husband and where does he live?

A Eddie A. Carter and he is now in Johnston County Memorial Nursing Center, Smithfield, North Carolina.

Q How long has he been in the nursing home?

A Since September 5, 1975.

Q Why does he live at the nursing home instead of at home with you?

A Because of a mental state he is in, I cannot care for him at home. It was a twenty-four hour job.

Q What is the source of your husband's income and how much is it?

A He gets three hundred thirty-five dollars and some few cents—I can't remember exactly—Social Security. He gets two hundred thirty dollars and some few cents retirement from the state, which amounts to approximately five sixty-some.

Q What is the source of your income and how much is it?

A I get Social Security, two hundred forty-one dollars and ten cents each month.

Q Do either of you have any other income?

A No, ma'am.

Q Do you have an estimate as to how much the nursing home bill is each month?

A Six hundred and seventeen dollars a month.

Q I'm asking about the nursing home bill.

A I'm so sorry. It runs between a thousand and eleven hundred dollars a month.

Q Do you have any insurance that can help you pay that bill?

A No, ma'am.

Q How is the bill paid now?

A I pay six hundred seventeen dollars per month and then Medicaid picks up the tab for the remainder.

Q Do you then pay both of his checks and part of your own check?

A Yes, ma'am.

Q Ms. Carter, can you estimate how much your monthly bills are for electricity?

A Approximately fifty-five or more dollars a month.

Q What about for oil?

A About twenty-three or more per month.

Q Car insurance?

A I think my car insurance is approximately ten—fifteen dollars a month. I can't remember exactly, somewheres thereabouts.

Q Car repairs?

A About fifteen per month, thirty a month—no, I guess about fifteen a month, something like that, I'm sorry.

Q What about gas?

A About thirty a month.

Q What do you spend for food?

A Well, at the very minimum, fifty a month.

Q What about vitamins?

A I do take vitamins and they run about ten dollars a month.

Q Do you have a telephone?

A Yes.

Q How much is that?

A Eleven.

Q Do you pay property taxes?

A Yes, we do pay property taxes.

Q About how much is that?

A That runs—let's see if I can remember—about fifteen or more dollars per month. I'm not sure.

Q That's averaging it out.

A Averaging it out per month, yes, uh-huh.

Q Do you have any other bills you have to pay on a regular basis?

A Well, not on a regular basis other than an extra twenty-five that I'm having to pay to the nursing home at this time.

Q Can you tell the Court what, if anything, you have had to do without while you have been trying to survive on the one hundred sixty-two dollars?

A A lot of things. Before this happened, my husband and I would go out to dinner approximately a couple of times a week. If we took a notion to take a little trip to the coast or the mountains, something of that sort, we would just take off on a Friday and come back on Sunday afternoon—all this was cut out—movies. All these things completely had to be cut out. Also, I was used to going to the beauty parlor to get my hair done once a week and I can't do that anymore. There's a number of things. I don't know if I can remember them all. Anyway, I do know that there's quite a number.

COURT: What is your age?

A Sixty-two.

Q Do you have to take a special diet?

A Yes, I do and I cannot afford it on the income that's left over for me to live on.

Q And do you now buy new clothes?

A No, I haven't had any new clothes since my husband became ill and we exhausted our savings that we had.

Q How long ago was that?

A Since—actually, our savings run out about the time, the first month that I put him in the nursing home.

Q That was?

A September 5, 1975.

Q Can you remember what you had to do without during the first six months after you put him in the nursing home?

A All these things I have just mentioned I had to do without because our savings was exhausted at that time.

Q Did you have to take out any loans?

A Yes. My husband and I had very good credit references and we had Master Charge cards and I have borrowed from First Citizens Bank in Clayton, North Carolina, several times to try to keep my head above water.

Q And you're still paying that loan back?

A Yes, ma'am.

Q Have you ever not been able to pay the full amount of your patient liability, or I should say what the nursing home bills you for each month?

A Yes, ma'am.

Q When you couldn't pay that amount and you fell behind in your payment to the nursing home, what happened?

A Well, for instance, when my Social Security started in June of '77, there was a little mix-up at the Social Security Services and I paid in June what I was billed for, but in July they came up with a much larger bill.

Q That's what caused you to fall behind?

A I was billed for more than our income.

Q And then in May of last year, what happened?

A That's what I'm taking about, in May of last year. At the time—let me explain a little further so it can be understood. I didn't know which way to turn when this particular thing happened, so I did go to Legal Aid to ask for help. Marsha Stine assigned, helped me get an extension to pay a little a month—no, I'm sorry. Let me explain further. I went to the administrator and asked if I could do this—I had to go to the owner of the nursing home. He said I could pay a little a month. The first day of May of '78, there was a letter mailed from Dunn, from a Gilmore Parrish, owner of the nursing home, and I was told that I would have to pay the ninety-nine dollars, which is what I was lacking in catching it up, by the eight of May, five o'clock, or I would have to take my husband from the nursing home.

Q Were you able to raise that money?

A No. Then is when I went to see Wake Legal Aid and Marsha Stine was appointed to me to kind of help me with this. She called Mr. Parrish and talked with him and got another thirty-day extension on this.

Q So your husband was not evicted from the nursing home.

Q No.

Q If your husband were to be evicted from the nursing home, is there another nursing home near your home where you could have him placed?

A No, ma'am.

Q Ms. Carter, has anyone ever informed you of a way you could avoid paying part of your Social Security check to the nursing home each month?

A Yes, my husband's case worker, Donna Pittman, told me she hated to mention it, but said, you can divorce your husband and you will not be liable for your Social Security, you will not have to give it up. This is the only way I can advise you that you can get by without having to pay it.

Q Did you consider getting a divorce?

A No.

Q Why not?

A When I married my husband, I said for better or for worse. I took my marriage vows very seriously and just because he's ill, I do not intend to divorce him now if I have to live off of bread and water.

Q At the present time, how much do you owe the nursing home in addition to your monthly bill of six hundred seventeen dollars.

A Approximately four hundred dollars right at the present time.

Q When did you receive notice of this extra amount of money?

A In February, February, around the first few days of February is when my February bill came in from the nursing home.

Q Has the nursing home contacted you about this additional four hundred dollars?

A Well, when this happened, I went down and talked to the administrator and he couldn't explain it to me. So I was advised to call Gilmore Parrish at Dunn and talk with him. I did this and he said that definitely I would have to pay it so, again, I came to Marsha for help, Marsha Stine.

Q What arrangements have you been able to make to pay this additional four hundred dollars?

A She talked to him and worked quite a while trying to help me, about half a day, and so she worked it out with him that I could pay twenty-five dollars in February and twenty-five in March.

Q That is in addition.

A In addition to the six hundred seventeen, plus the sixteen to eighteen dollars I pay for laundry and his medicine.

Q How long have they told you they will work with you on the twenty-five dollars a month?

A Until today, the 21st of March, 1979.

Q If the Court does not grant you the relief you seek today, what will you do?

A I don't know. I just really don't know what I'll do. I'm at my wits end. If they put him out, I can't care for him at home and I don't how what I'll do.

Q They have given you until today.

A Until today.

MS. CARY: Your Honor, I have no further questions of this witness.

JUANITA HOLLAND,

a witness called by the plaintiff, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HAYES:

Q Give us your age.

A Fifty-three.

Q Current address?

A 5338 Melynda Road here in Charlotte.

Q Are you currently employed?

A Yes, ma'am.

Q Where is that?

A National Mattress Company here in Charlotte.

Q What do you do for them?

A I'm a sewing machine operator.

Q Were you married to the late Billy Wade Holland?

A Yes, ma'am.

Q When did he pass away?

A February 22 of this year.

Q What was the cause of his death?

A Brain cancer.

Q When did he first learn of that?

A In 1972.

Q Was he working at that time?

A Yes.

Q Where was that?

A At Pharr Yarns in McAdenville.

Q How did his illness in 1972 affect his ability to continue working?

A Well, when it first started, he was out mowing the grass and he came in and something happened to his head and I

rushed him to the doctor. He thought he had a sunstroke and it wasn't a sunstroke so he gave him some tablets to see if it would throw it off, stop them. It wasn't that and these little strokes kept coming on ever so often.

Q Did he eventually have to quit his job?

A He sure did.

Q Were you able to care for him at home?

A I cared for him as long as I could, as much as I could.

Q And then what did you do to arrange for his care?

A I had to stop working and care for him at home until I had to put him in a nursing home.

Q At the time you placed your husband in the nursing home, did you seek medical assistance from your local Department of Social Services?

A Yes, ma'am.

Q Did they inform you that you would have to have a patient liability or payments from you toward his nursing home bill?

A Yes, ma'am.

Q Mrs. Holland, as far as you remember, was February of 1978 a typical month for you and your husband in terms of bills and income?

A It was a bad time.

Q Well, was it any worse than any of the rest of 1978?

A I would say that the whole year was bad for me. It really was bad.

Q Taking February as just a point in time, can you tell me, were you working at that time?

A Ye, I was working.

Q And your husband was in the nursing home?

A Yes, ma'am.

Q And do you remember approximately what you were making a month in terms of your take home pay?

A About three hundred twenty a month.

Q And what was the source of your husband's income?

A His Social Security check was two hundred eighty-eight dollars a month.

Q Was there any other income to the family for you or your husband?

A No, ma'am.

Q Do you remember what your patient liability, that is, what you had to pay to the nursing home was at that time?

A I had to put his check and then I had to put one hundred sixty-eight dollars of my check every month, which was for his patient liability which was four hundred twenty-five dollars.

Q So you had to pay all of his Social Security plus some of your own wages?

A Yes, ma'am.

COURT: His Social Security plus one hundred sixty-eight dollars of yours?

A Yes, sir.

Q What was your patient liability, total patient liability?

A Four hundred twenty-five.

Q During the several years in which you were bound to pay a patient liability, can you tell us how this affected you economically?

A Well, after I put him in the nursing home, in those years I had to put my house up for sale, him and I had bought a boat and I had to, I got this man up there and he had taken up the payments on it and gave me two hundred dollars. I had to sell it and we had a riding lawn mower and I sold it. I sold—he had bought a chain saw and I had to sell it and I

also stored my furniture at my son's when I put the house up for sale. Finally I had to get it and sell it piece by piece to people that would but it and give me what they could for it.

Q During this period of time, were there things that you needed that you had to go without?

A Yes, ma'am, there sure was. For instance, I was supposed to get my glasses changed and which I have never had the money to get them changed with. There has been times I needed to go to the doctor for a physical and other things and I could not go and I haven't had any new clothes in, I know, four years.

Q You mean that literally.

A Literally, right.

Q During this time, were you able to arrange for a stable place for yourself to live?

A No, ma'am. I had to—I moved in with my mother and then from there I moved in with my sister. It was just from one place to the other that I would go, the ones that could help me, because I did not have the money to pay the rent myself on an apartment or anything like that. I couldn't afford it.

Q Did your Department of Social Services worker ever mention a separation agreement to you?

A Yes, ma'am, she did.

Q Who was this?

A This was Mrs. Mattice.

Q What county?

A In Gaston County.

Q That's where you were living at the time.

A Right.

Q Exactly what did Mrs. Mattice say to you about the separation agreement?

A Well, I got a letter stating that his liability had went up and I took it over there to her and I told her I just couldn't afford to pay that much and buying his medicine also. She told me that I could get a separation paper from my husband and I wouldn't have to pay all of this and I told—she asked me what did I think about it and I said, well, I just don't think I can go through with that. I said because I love him too much and I want to do for him as long as he lives and I want to be with him as long as I can. I just told her I didn't think I could go through with it because the way she talked, I couldn't ever see my husband any more or do for him, you know.

Q So at that time, you refused to sign such an agreement.

A I sure did.

Q Mrs. Holland, did you eventually sign one of these separation agreements?

A Yes, ma'am.

Q When was that?

A When I talked to you. When I first came to talk to Legal Aid and talked to you and you talked to me about it and you explained to me that it would not cause me that I could not see my husband any more, that I could also see my husband and continue doing for him, when I went to the nursing home, what I could.

Q Was there anything else that you knew at that time that affected your decision to sign the separation agreement?

A Yes, ma'am. I just couldn't keep paying all that much money and all. I had just got to the place where I didn't know what to do. I was just at the place where I just didn't know which way to turn.

Q Do you remember what month that was that you finally signed?

A That was in April of '78.

Q When you finally signed the so-called separation

agreement in April of 1978, do you remember how that signing affected you emotionally?

A Yes, ma'am, I sure do. It really hurt me. It upset me and I cried for two days and two nights and I finally had to go to the doctor. It upset me so bad, I finally had to go to the doctor and get something for my nerves. I'm still taking the nerve pills and it really upset me. It made me sick to know that I would have to sign a separation paper to get out of paying so much to a nursing home for my husband which is passed away now. I'm still upset.

Q Have you ever had any problem with your nerves or sought medical attention for your nerves before that time?

A No, ma'am. I have always been in good health. I have never had any trouble with my nerves or anything.

Q Prior to the time you signed that separation agreement and your liability was reduced, were you able to keep up with the amount of payment that was expected from you?

A No, ma'am, I couldn't.

Q Did you ever have any trouble from the nursing home on account of this?

A Yes. I went up there to the nursing home. I would go every Sunday and see him and every Saturday that I possibly could and I went up there one Sunday and the lady from an office came upstairs while I was visiting and she sent word for me to come to her office and I went. She told me that the nursing home had taken—some new people had taken over the nursing home and she said they would have to have this back money that I owed or they would have to take further steps, that this man was demanding this money.

Q What kind of effect did this have on you?

A It upset me so bad until I cried all the way home and then on Monday is when I called you and told you about it.

Q Do you know why the nursing home didn't take those "further steps" that they indicated they were going to take?

A Well, when I called you and told you about it, you told me you could put a stop to it. That's what you said.

Q Now that your husband has passed away, do you still have an outstanding bill at that nursing home?

A Yes, ma'am, twelve hundred and something dollars is hanging over my head to pay.

Q Do you have any means to pay that?

A No, ma'am, I do not.

MS. HAYES: That's all the questions that I have.